

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 31.07.2023

Pronounced on 12.09.2023

LPA No.263/2019

LPA No.252/2019

LPA 263/2019

1. State of J&K,
through Commissioner/Secretary to Govt,
General Administration Department,
Civil Secretariat, Srinagar/Jammu

2. J&K Public Service Commission,
through its Secretary,
Rehsam Ghar Colony, Jammu.

3. Under Secretary to Govt.,
General Administration Department,
Civil Sectt., Srinagar/Jammu

.....Petitioners

Through: Mr. Raman Sharma, AAG.

versus

Ruppali Phull, Age: 31 years,
D/o Shri Neelam Kumar Phull,
R/o H.No.121/A, Shopping Centre,
Bakshi Nagar, Jammu.

.....Respondent(s)

Through: Mr. Abhinav Sharma, Sr. Advocate, with
Mr. Abhimanyu Sharma, Advocate.

LPA 252/2019

1. State of J&K,
through Commissioner/Secretary to Govt,
General Administration Department,
Civil Secretariat, Srinagar/Jammu

2. J&K Public Service Commission,
through its Secretary,
Rehsam Ghar Colony, Jammu.

3. Under Secretary to Govt.,
General Administration Department,
Civil Sectt., Srinagar/Jammu

.....Petitioners

Through: Mr. Raman Sharma, AAG.

versus

Abdul Rehman, Age:47 years,
S/o Mohd. Sadiq,
R/o Village Chowkian, Tehsil Darhal
Malikan, District Rajauri.

.....Respondent(s)

Through: Mr. Nitin Bhasin, Advocate.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT**Tashi Rabstan - J**

1. Since common question of law and facts are involved in LPA 263/2019 and LPA No.252/2019, as such we deem it proper to decide both the appeals by this common judgment.

2. The facts-in-brief are that in response to advertisement notice dated 02.09.2011 issued by the Public Service Commission, respondent-Ruppali Phull in LPA 263/2019 had applied in the open merit category and secured 1220 marks. Three more candidates also secured the same marks. Accordingly, 02 candidates were selected for appointment, whereas Ruppali Phull along with another candidate was left out despite the fact that the Public Service Commission had advertised 189 posts, however, after selection it recommended only 182 candidates for appointment. It was argued that had the Public Service Commission recommended 189 candidates as per the advertisement notice, Ruppali Phull would have certainly been in the list of appointed candidates.

3. Similarly, in response to advertisement notice dated 30.12.2008 issued by the Public Service Commission, respondent Abdul Rehman in LPA No.252/2019 had applied in the RBA category and secured 1050 marks. One

more candidate had secured the same marks. Though the other candidate was recommended by the Public Service Commission for appointment, but respondent Abdul Rehman was left out.

4. In both the cases certain selected candidates did not come forward to join. Since the respondents herein were next in merit, they laid their claim against the posts they had participated. However, when the appellants herein did not consider their claim, Ruppali Phull filed SWP No.1067/2012 and respondent Abdul Rehman filed SWP No.2269/2011. Since both the petitions involved common question of law and facts, as such they came to be clubbed together and disposed of by a common judgment and order dated 08.08.2013, relevant portion whereof is reproduced hereunder:

“In SWP No.2269/2011 petitioner stands as “first waiting” under RBA Category and, is found entitled to consideration for appointment against the vacancy caused due to non-joining of Mohd. Farooq Shan.

In SWP No.1067/2012 petitioner is found entitled to consideration for being appointed either against the availability of seven unfilled posts or against one of the two posts which had fallen vacant due to the non-joining of two candidates namely Vijay Kumar and Jatinder Goswami.

Respondents’ no.1 & 2 shall accord consideration to the appointment of petitioners accordingly. Let this exercise be completed within a period of one month from the date a copy of this order is made available to the respondents by the petitioners.”

5. Subsequently, the directions passed by the Writ Court were also upheld by the Division Bench of this Court as well as by the Apex Court. Accordingly, the Government considered their cases, but rejected the same vide Government Order No.1259-GAD of 2016 dated 18.11.2016 in case of Ruppali Phull and vide Government Order No.1258-GAD of 2016 dated 18.11.2016 in case of Abdul Rehman.

6. Feeling aggrieved, respondents Ruppali Phull and Abdul Rehman challenged the said orders before the writ court in two different writ petitions and the Writ Court vide common judgment dated 02.04.2019 while allowing the writ petitions quashed both the orders dated 18.11.2016 with a direction to the appellants herein to consider the cases of Ruppali Phull and Abdul Rehman within a period of eight weeks. Hence, the present appeals on behalf of appellants-State.

7. Heard learned counsel appearing for the parties, considered their rival contentions and perused the appeal files thoroughly.

8. It is the admitted case that the Public Service Commission had failed to draw up the waiting list of candidates in the order of merit in terms of Rule 57 of the Jammu & Kashmir Public Service Commission (Business & Procedure) Rules, 1980 and SRO 387 dated 01.12.2008. The purpose of such a list is that in case any meritorious candidate fails to join for any reason then the next meritorious candidate may be offered vacant post as it is an existing vacancy. Therefore, we do not find any force in the stand of appellants-State taken in paragraph (iv) of brief factual position of the appeal that all the vacancies occurring due to non-joining of candidates should be carried forward to the subsequent competitive examination – a stand which is totally alien to Rule 57 and SRO 387 (supra). Further, the appellants-State, more particularly the officers at the helm of affairs of the State dealing with the matter, have taken two contradictory stands in the said paragraph – on one hand they have averred that out of 182 candidates 17 candidates did not join within 21 days and, on the other hand, they have averred that the vacancies that occurred on account of resignation of the selected candidates after joining the services have

necessarily to be referred to the Public Service Commission for being filled up through next Combined Competitive Examination. It seems the appellants are trying to twist the facts to suit their own case. Although the appellants-State were expected to follow the rule position as well as the SRO while issuing the select list and making appointments-in-question, but they acted arbitrarily, as per their own whim and caprice thereby making mockery of the system without realizing that respondents Ruppali Phull and Abdul Rehman have been suffering for the last about twelve years without any fault on their part.

9. As regards the contention of learned counsel for appellants that the posts-in-question have already been filled up, we are in full agreement with the learned Single Judge that in the earlier round of litigation the learned Single Judge vide judgment dated 08.08.2013 had directed the appellants herein to accord consideration to the appointment of Ruppali Phull and Abdul Rehman when the posts-in-question have certainly not been filled up. In case of Abdul Rehman the post-in-question came to be filled up in September, 2013, i.e., after the judgment of learned Single Judge, and, in case of Ruppali Phull the post-in-question came to be filled up in the year 2018, by which time even the Division Bench and the Apex Court had also opined on the matter, therefore, filling up of the post was clearly in breach of the directions issued by the learned Single Judge that one post be kept reserved for respondent Ruppali Phull.

10. As regards the contention of appellants-State that at this stage the cases of Ruppali Phull and Abdul Rehman were required to be rejected on account of administrative inconvenience and difficulties, it leads to the conclusion that the appellants-State are still admitting the claim of respondents herein, thus the

consideration order on the part of appellants herein was not at all fair and reasonable. Therefore, we are in full agreement with the learned Single Judge that it was not open to the appellants herein to reject the case of respondents herein on account of administrative inconvenience when no such grounds was urged before the Court in the previous round of litigation.

11. The judgments cited by the learned counsel for appellants are clearly distinguishable and do not apply to the facts of present case.

12. In view of what has been discussed above, we are not inclined to take a view other than the one taken by the learned Single Judge. Accordingly, both the appeals are dismissed along with connected CM/IA. Further, in case the posts-in-question have already been filled up, in such an eventuality the appellants-State are directed to create supernumerary posts for the respondents Ruppali Phull and Abdul Rehman without any delay and they shall be entitled to all consequential benefits including seniority, promotion etc. from the date the other similarly situated candidates came to be appointed minus the monetary benefits.

Jammu
12.09.2023
(Anil Sanhotra)

(Mohan Lal)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No